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IN THE

Supreme Court of the United States

October Term, 1957

No. 736

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (formerly Local Union 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER

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ARGUMENT

The National Labor Relations Board, in its brief in opposition, has failed to answer the basic question in this case, namely, whether, in view of the special protections afforded picketing in Section 13 of the Act—such protections being available regardless of whether picketing is carried on at a place of employment where other neutral employers are also at work—the Board can be permitted to deny that right by the simple device of inferring through circumstances normally attending all picketing at a common situs of employment the existence of an object of involving neutrals as required by Sec. 8(b)(4) of the Act. If the Board can be permitted to rely on this type of circumstantial inference, then it would be an extremely easy matter

for it to find excuse to outlaw all picketing. That is precisely what the Board has proceeded to do. In a companion case to the present one *(General Truck Drivers, Chauffeurs, Warehousemen & Helpers Local 270, et al. and Robert L. Diaz, Jr., et al.,* 117 N.L.R.B. No. 132) the Board proscribed all picketing of a primary employer at a place where that employer's employees spent the major portion of their working day and restricted the union to picketing at the employer's garage where its employees spent less than 25 minutes of their time. Again, the Board did this solely on the basis of inferring an unlawful object from such circumstances as the ability to picket at another place of employment (the garage), the presence at the common situs of employees of neutrals who are members of another union known to be reluctant to cross picket lines, and the existence of an arrangement between a customer of the picketed employer (a motor carrier) and the union, entered into after all picketing had ceased and at the request of that customer, that, if the union resumed picketing, the customer would first be given an opportunity to unload its products and obtain the services of another carrier. The Board's decision in that case was reluctantly affirmed by the court below *(General Drivers Local 270, et al. v. N.L.R.B.,* Case No. 13,968, decided January 23, 1958, and as yet unreported). (A petition for writ of certiorari in that case has been prepared and will be filed with this Court as soon as the court enters its enforcement decree therein, which it is expected will be done within the next few days. Since that case is a companion case to the present one and presents identical issues, and since the same principles of the law are applicable to the two cases, it is respectfully requested that consideration of the instant petition for certiorari be deferred until the petition in the *General Drivers Local 270* case can be filed, which will be done immediately after the decree therein is entered. Counsel for the National Labor Relations Board have informed the undersigned counsel that the Board has no objection to this Court's considering

the two petitions together even though this might involve a delay in considering the petition in the instant case.)

Since Congress did not see fit to draw any distinction between picketing at a common situs or picketing at any other place which harbors a primary labor dispute, it is difficult to see why the Board should be permitted to make its own law on the subject, particularly in a field so fraught with controversy as that of Taft-Hartley. *Cf. Rabouin v. N.L.R.B.*, 195 F. 2d 906. While it is recognized that proof of violation of Section 8(b)(4), as well as proof of violation of any other section of the Act, need find support only in substantial evidence on the record considered as a whole, it is nevertheless submitted that "substantial evidence," when taken in context with the specific protections of Section 13, must involve something more than mere speculation or surmise when rights under that section are involved, and must, at the very least, require the Board to rely on clear evidence of an *actual,* not merely an inferred, object of deliberately seeking to extend the picketing against neutrals for the object of purposely involving a neutral's employees in the primary dispute, as distinguished from incidentally involving such employees as a consequence of such picketing. See *Pure Oil Co.*, 84 NLRB 315; *N.L.R.B. v. Service Trade Chauffeurs, Inc.*, 191 F. 2d 65.

Respectfully submitted,

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